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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11

12 MARCIANO PLATA, et al.,

13 *Plaintiffs,*

14 v.

15 ARNOLD SCHWARZENEGGER, et al.,

16 *Defendants.*
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19
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Case No. C01-1351 TEH

**SUPPLEMENTAL DECLARATION OF
MARTIN H. DODD IN SUPPORT OF
RECEIVER'S MOTION FOR ORDER
ADJUDGING DEFENDANTS IN
CONTEMPT FOR FAILURE TO FUND
RECEIVER'S REMEDIAL PROJECTS
AND/OR FOR AN ORDER
COMPELLING DEFENDANTS TO FUND
SUCH PROJECTS**

Date: October 6, 2008

Time: 10:00 a.m.

Courtroom: Hon. Thelton E. Henderson

23 I, Martin H. Dodd, declare as follows:

- 24 1. I am an attorney licensed to practice before the courts of the State of California and
25 before this Court and a member of the law firm of Futterman & Dupree, LLP, attorneys
26 for Receiver J. Clark Kelso ("Receiver"). The facts set forth herein are based on my own
27 personal knowledge and if called as a witness, I could competently testify thereto.
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- 1 2. The State Department of Personnel Administration ("DPA") has filed a petition for writ
2 of mandate against State Controller John Chiang, now pending in the U.S. District Court
3 for the Eastern District of California (*Gilb et al. v. Chiang, et al.*, Case No. 2:08-CV-
4 01960-MCE-DAD ("*Gilb*"). Judicial notice of the action and the pleadings on file
5 therein is hereby requested. FRE 201.
- 6 3. According to the pleadings DPA filed in *Gilb*, DPA has brought the action to require the
7 Controller to comply with an Executive Order issued by the Governor to reduce State
8 employee wages and salaries during the recent budget stalemate; the Controller has
9 indicated that he does not intend to reduce wage and salary payments to State employees.
10 Attached hereto as Exhibit A is a true and correct of the Answer To Petition For Writ Of
11 Mandate & Complaint For Injunctive And Declaratory Relief, filed by the Controller on
12 September 11, 2008 as Docket # 41 in the *Gilb*. Judicial notice thereof is requested. FRE
13 201. Attached hereto as Exhibit B is a true and correct copy of the Declaration of Susan
14 Griffith, filed by the Controller on September 11, 2008, as Docket #42 in the *Gilb*.
15 Judicial notice thereof is requested. FRE 201. Attached hereto as Exhibit C is a true and
16 correct copy of a Declaration of Susan Griffith, filed by the Controller on September 12,
17 2008, as Docket #45-3 in *Gilb*.
- 18 4. Attached hereto as Exhibits D-1 through D-3 are true and correct copies of an Ex Parte
19 Motion and supporting declarations of Lisa Tillman and Deborah Hysen, respectively,
20 filed on June 13, 2007 by the Defendants in *Coleman et al. v. Schwarzenegger et al.*,
21 Case No. 2:90-cv-00520 LKK JFM P (E.D. Cal.) ("*Coleman*"). Judicial notice of the
22 documents is hereby requested.
- 23 5. Attached hereto as Exhibits E-1 through E-3 are true and correct copies of an Ex Parte
24 Motion and supporting declarations of Lisa Tillman and Robin Dezember, respectively,
25 filed on April 14, 2008 in *Coleman*. Judicial notice of the documents is hereby requested.
26 FRE 201.
- 27 6. Attached hereto as Exhibit F is a true and correct copy of a Declaration of Lisa Tillman
28 and accompanying exhibit, filed on September 15, 2008, in connection with the three-

1 judge panel proceeding, as *Plata* Docket ## 1497 and 1497-2. Judicial notice thereof is
2 requested. FRE 201.

3 7. In the latter part of August 2008 following the filing of this motion, at the Receiver's
4 direction, I called Christopher Krueger, an attorney in the Office of the Attorney General,
5 who I understood to be supervising the attorneys in that office tasked with working on the
6 I-Bank transaction. I asked Mr. Krueger if his office had made any progress with
7 preparing a stipulation and order to be submitted to the Court authorizing the transaction.
8 Mr. Krueger said no and made a comment about his office not wanting to work on a
9 document that might be "inconsistent" with the position his office was taking in
10 opposition to the Receiver's motion. I suggested to Mr. Krueger that pursuing the I-Bank
11 transaction, which had been commenced prior to the filing of the motion, might be a way
12 to provide the Receiver with the necessary funding for his capital projects and thereby
13 avoid the contempt remedy the Receiver had requested. It seemed to me that it was
14 potentially in all parties' interests to push that matter forward. He indicated he would
15 confer with his "clients" and get back to me. I waited a week and did not hear further
16 from him. Accordingly, I called him again. At that point he informed me that no one in
17 his office would be working on the I-Bank transaction and that the Receiver would have
18 to address the transaction directly with the Governor's Office and the Department of
19 Finance.

20 8. Although the Court has permitted the documents from the Receiver's *draft* Facility
21 Program Statement to be filed under seal (Docket # 1500), Defendants have nevertheless
22 suggested that the Receiver is somehow attempting to hide his plans and the Attorney
23 General issued a press release accusing the Receiver of cloaking his plans in a "veil of
24 secrecy." Not so. In or around the end of July and the beginning of August 2008, I had a
25 series of communications with Lisa Tillman, a Deputy Attorney General representing the
26 State Defendants in the three-judge panel proceeding. She raised a concern with me
27 about a proposed deposition of Victor Brewer, an employee of the State Department of
28 Mental Health who is on the Receiver's Core Planning Team for the 10,000 bed project.

1 Specifically, she told me that, as a member of the Core Planning Team, she understood
2 that Mr. Brewer had received a copy of the draft Facilities Program Statement. Ms.
3 Tillman wanted to alert me that Mr. Brewer might be asked questions regarding that
4 document and she thought that the Receiver might have concerns about such questioning
5 in light of the three-judge court's orders limiting discovery directed at the Receiver and
6 his staff.

7 9. Because Ms. Tillman was correct in her assumption, discussions ensued between me, Ms.
8 Tillman and counsel for plaintiffs in that proceeding about whether, and to what extent,
9 State employees who were members of the Receiver's Core Planning Team would be
10 permitted to testify about the Receiver's plans generally, and the draft Facilities
11 Statement Program specifically. Plaintiffs' counsel suggested making the document
12 subject to the protective orders in *Plata* and *Coleman* as a way to maintain the
13 document's confidentiality, while permitting the parties to review it and discuss it with
14 clients and witnesses. This solution was acceptable to the Receiver. Attached hereto as
15 Exhibit G is a true and correct copy of an e-mail I sent on August 1, 2008 to counsel for
16 the parties to memorialize these understandings. In the short term, Mr. Brewer's
17 deposition was continued to later in the month.

18 10. In the meantime, on or about August 13, 2008, the Receiver's chief of staff, John Hagar,
19 met with counsel for the parties in the three-judge panel proceeding to discuss the
20 Receiver's construction plans, including specifically the status of the 10,000 bed and
21 facilities upgrade projects. At the conclusion of that meeting, Mr. Hagar provided
22 counsel with copies of the draft Facilities Program Statement, and did so expressly on the
23 condition that the document would be subject to the existing protective orders, that the
24 document would remain confidential and would not be filed publicly. The parties
25 accepted the document on those terms. At Mr. Hagar's request, I confirmed these
26 understanding by e-mail to counsel for the parties on August 14, 2008. A true and correct
27 copy of the e-mail is attached hereto as Exhibit H.
28

1 11. Thereafter, Ms. Tillman asked if the Receiver would permit the intervenor-defendants in
 2 the three-judge panel proceedings to review the draft Facilities Program Statement. I said
 3 yes if they agreed to be bound to the same terms and conditions for use of the document
 4 to which the other parties had agreed. She thereafter sent to me evidence that the
 5 intervenor-defendants had agreed to the protective orders.

6 12. On or about September 12, 2008, I received a telephone call from Daniel Powell, the
 7 Deputy Attorney General representing the Defendants in this matter. He wanted to know
 8 if we would stipulate to permit him to file publicly portions of the *draft* Facilities
 9 Program Statement in connection with the Defendants' opposition to the Receiver's
 10 motion to have Defendants held in contempt. I responded by letter that the Receiver
 11 considered any such filing or use of the draft Facilities Program Statement to be a
 12 violation of the terms upon which the documents had been provided to the Office of the
 13 Attorney General and that we would request sanctions against anyone who undertook to
 14 or had authorized the breach of the promise of confidentiality.

15 13. I am confident that, had we known that Defendants contemplated using the document, not
 16 in connection with the three-judge panel proceeding, but in the manner Mr. Powell
 17 suggested, the Receiver never would have agreed to provide the draft to counsel in the
 18 first instance.

19 I declare under penalty of perjury under the laws of the State of California that the
 20 foregoing is true and correct.

21
 22 Dated: September 22, 2008

FUTTERMAN & DUPREE LLP

23 By: /s/ Martin H. Dodd
 24 Martin H. Dodd
 25 Attorneys for Receiver J. Clark Kelso
 26
 27
 28

CERTIFICATE OF SERVICE

The undersigned hereby certifies as follows:

I am an employee of the law firm of Futterman & Dupree LLP, 160 Sansome Street, 17th Floor, San Francisco, CA 94104. I am over the age of 18 and not a party to the within action.

I am readily familiar with the business practice of Futterman & Dupree, LLP for the collection and processing of correspondence.

On August 22, 2008, I served a copy of the following document(s):

SUPPLEMENTAL DECLARATION OF MARTIN H. DODD IN SUPPORT OF RECEIVER'S MOTION FOR ORDER ADJUDGING DEFENDANTS IN CONTEMPT FOR FAILURE TO FUND RECEIVER'S REMEDIAL PROJECTS AND/OR FOR AN ORDER COMPELLING DEFENDANTS TO FUND SUCH PROJECTS

by placing true copies thereof enclosed in sealed envelopes, for collection and service pursuant to the ordinary business practice of this office in the manner and/or manners described below to each of the parties herein and addressed as follows:

— BY FACSIMILE: I caused said document(s) to be transmitted to the telephone number(s) of the addressee(s) designated.

X BY MAIL: I caused such envelope(s) to be deposited in the mail at my business address, addressed to the addressee(s) designated below. I am readily familiar with Futterman & Dupree's practice for collection and processing of correspondence and pleadings for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business.

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21
22 I declare that I am employed in the offices of a member of the State Bar of this Court at
23 whose direction the service was made. I declare under penalty of perjury, under the laws of the
united State of America, that the above is true and correct.

24 Executed on September 22, 2008 at San Francisco, California.

25 

26 Lori Dotson
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